



4910-06-P

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Railroad Administration**

**[Docket Number FRA-2013-0024]**

### **Petition for Waiver of Compliance**

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated March 6, 2013, BNSF Railway Company (BNSF) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR Part 234, Grade Crossing Safety, Including Signal Systems, State Action Plans, And Emergency Notification Systems. FRA assigned the petition Docket Number FRA-2013-0024.

BNSF seeks a waiver from the requirements of 49 CFR 234.106, *Partial activation*, at highway-rail grade crossings that are equipped with four-quadrant gates and automated horn system (AHS) equipment throughout its rail network. Specifically, BNSF seeks FRA's approval to operate AHS equipment at four-quadrant gate installations in the event that the exit gates fail to lower to the horizontal position, in lieu of the alternative methods of protection listed in 49 CFR Part 234, Appendix B.

BNSF requests this waiver of compliance as a method to minimize operational impacts caused by the malfunction or extended outage of vehicle presence detection systems, both of which are often wholly outside of its control. Typically, maintenance responsibilities for in-pavement inductive-loop detectors lie with the applicable road authority, not BNSF. Additionally, BNSF believes that with respect to exit gates not impacted by State design parameters that require such gates to remain in the vertical position upon failure of the vehicle presence detection system, granting this waiver will similarly minimize operational impacts on BNSF caused by exit gate malfunctions.

In its petition, BNSF submits that granting the waiver will improve safety. It maintains that the safety of the traveling public will be enhanced by allowing for the use of AHS equipment, which provides a recognized warning (an audible horn) that is superior to a crew member, flagman, or police officer present at a crossing. Moreover, BNSF asserts that the requested relief will allow trains to operate through the affected crossings at normal operating speeds, thereby minimizing the length of time that trains obstruct such highway-rail grade crossings. BNSF concludes that, if FRA were to grant the subject waiver, delays to the traveling public would also be reduced.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at [www.regulations.gov](http://www.regulations.gov) and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue, S.E., W12-140, Washington, D.C. 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- Web site: <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Fax: 202-493-2251.
- Mail: Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, S.E., W12-140, Washington, D.C. 20590.
- Hand Delivery: 1200 New Jersey Avenue, S.E., Room W12-140, Washington, D.C. 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by [INSERT DATE 45 DAYS FROM PUBLICATION OF THIS NOTICE] will be considered by FRA before final action is taken. Comments received after that date will be considered as far as is practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). See <http://www.regulations.gov/#!privacyNotice> for the privacy notice

of regulations.gov or interested parties may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477).

Issued in Washington, DC, on April 3, 2013

Robert C. Lauby  
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for Regulatory and Legislative Operations

[FR Doc. 2013-08252 Filed 04/08/2013 at 8:45 am; Publication Date: 04/09/2013]